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OF AN INTERNATIONAL CRIMINAL COURT
16 March-3 April 1998

COMMENTS FROM GOVERNMENTS WITH REGARD TO DOCUMENT A/AC.249/1998/L.10 ENTITLED 'ESTABLISHMENT OF THE COURT AND RELATIONSHIP WITH THE UNITED NATIONS'

I. INTRODUCTION

1. Document A/AC.249/1998/L.10, entitled 'Establishment of the Court and relationship with the United Nations', was circulated to delegations during the last session of the Preparatory Committee on the Establishment of an International Criminal Court held from 1 to 12 December 1997, with the request that any suggestions on the subject be submitted to the Secretariat no later than 15 January 1998.

2. The present document reproduces the only reply received as at 3 February 1998. Replies that may be forthcoming will be reproduced as addenda to the present document.

II. COMMENTS FROM GOVERNMENTS

FRANCE

[Original: French]

[20 January 1998]

I. FINANCING OF THE COURT

1. The method of financing depends on the type of institution that is chosen and its relationship with the United Nations (see below). If, as France suggests, the choice is to have a specialized agency or an organization

established on terms similar to those envisaged for a specialized agency, the budget would have to be an independent budget and the financing would be apportioned among the Member States. The key to the apportionment would have to be based on that of the General Assembly, adapted according to the number of States Parties (according to the scale of assessments of the United Nations, adjusted in light of the difference between the number of Member States of the Organization and the number of States Parties to the Convention). Voluntary contributions would also be possible.

2. We oppose the suggestion that the costs of proceedings should be borne by the State which refers a matter to the Court.

II. ORGANIZATION

A. Relations with the United Nations

3. France proposes that the Court should be an independent international organization (cf. A/AC.249/1998/L.10, sect. I[illegible]). The system opted for should guarantee the efficient functioning of the Court and set forth the autonomy of the Court in its field of competence. The idea of establishing a subsidiary organ of the United Nations should therefore be dropped. At the same time, a relationship with the United Nations, on the basis of an agreement, is essential.

4. Our preference would be for a system patterned on that of the specialized agencies as provided for in Article 57 of the Charter of the United Nations. That does not necessarily mean that the Court should be a specialized agency but it should be established using similar methods. Thus the relationship of the future Court with the United Nations must be the subject of an agreement. This last point must be set forth in the Statute as recommended by the International Law Commission.

5. In France's opinion, that agreement, drawn up by the President of the Court (on the basis of the work of the future preparatory commission), would be submitted to the General Assembly of the States Parties for approval.

B. Privileges and immunities

6. France supports the proposals made by the International Law Commission except as regards the following details:

(a) France proposes that the judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar should enjoy the privileges, immunities and facilities accorded to diplomatic agents in the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961 (or "accorded to diplomatic envoys in accordance with international law"). That, in principle, is the solution adopted for the International Tribunal for the former Yugoslavia, although the latter's Statute does not include in that category the Deputy Prosecutor and the Deputy Registrar.

(b) All other staff members of the Tribunal, including the other members of the Procuracy shall enjoy the immunities necessary for the exercise of their functions. They shall enjoy privileges and immunities similar to those of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 (Article V, "Officials", and VI, "Experts on Missions for the United Nations"), or similar to those in the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947. This issue will have to be the subject of a specific agreement prepared by the preparatory commission, but the precise text can be specified in the Statute, as is done in the instruments establishing other organizations (Agreement establishing the World Trade Organization: "The privileges and immunities ... shall be similar to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies" of 21 November 1947; Statute of the International Tribunal for the former Yugoslavia, article 30 "The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention" on the Privileges and Immunities of the United Nations of 13 February 1945).

(c) The lawyers, experts and witnesses before the Court shall enjoy such privileges and immunities as may be necessary to enable them to carry out their duties in complete independence.

(d) With the exception of those conferred on judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar, privileges, immunities and facilities shall be withdrawn by decision taken by an absolute majority and by secret ballot by the judges of the Court, meeting in general assembly.

C. Meeting of States parties

7. The draft convention should establish a general assembly of States parties according to the following terms. This assembly is not an "organ of the Court" in the meaning of article 5; it should be the subject of a specific provision following articles 1 and 2 (establishment of the Court and relationship with the United Nations). The new article could read as follows:

"1. A General Assembly of States parties to this Statute is hereby established.

Each State party shall have a representative on the General Assembly.

"2. The General Assembly of the States parties shall elect a President and a Vice-President, for one year, as well as any other official it deems necessary.

"3. The General Assembly of the States parties shall hold annual sessions and, when circumstances so require, special sessions. The latter shall be convened by the President on his motion or at the request of a majority of the members.

"4. The General Assembly of the States parties shall be competent:

"(a) To perform the functions assigned to it under this Statute;[1]

"(b) To rule on any budget questions;

"(c) To increase, if necessary, the number of judges or members of the Procuracy or the Registry, for the period that it shall determine.

"5. The General Assembly of the States parties may prevent the representative of a State party from participating in its deliberations when the State party:

"(a) Is in arrears in the payment of its contribution to the costs of the Court and the amount of its arrears is the same as or more than the contribution payable for the past two years; however, the General Assembly of the States parties may in that event, authorize participation in its deliberations if it finds that such default is due to circumstances beyond the State party's control;

"(b) Persistently violates the principles set forth in this Statute.

"6. The decisions of the General Assembly of the States parties shall be taken by secret ballot, by an absolute majority of the States parties. However, decisions taken under paragraph 4 (c) and paragraph 5 (a) and (b) of this article shall be taken by a two-thirds majority of the States parties."

8. This proposal is contained in article 2, "General Assembly of the States parties", of the working paper submitted by France in August 1996 (A/AC.249/L.3). It has not, however, been included in the compilation. Accordingly, France plans to formally resubmit this text at the start of the session in March.

D. Preparatory Commission

9. France is in favour of establishing a preparatory commission. The diplomatic conference will have to adopt a resolution to that effect and transmit it to the United Nations General Assembly for appropriate action.

10. Such a commission should be set up once the Convention has been signed by 50 countries. Its functions shall be those provided for in the Secretariat document entitled "final clauses" circulated at the December 1977 session of the Preparatory Committee.

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[1] Including, where necessary, referral of certain questions under article 52 of the Statute concerning cooperation of States parties or under that part of the Statute relating to the enforcement of decisions of the Court.

B. Oversight mechanisms for dealing with administrative and financial matters

11. These issues will be dealt with by the preparatory commission and by the general assembly of States parties. There is no need to discuss them in the Statute.